

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Docket No. Ken-20-169

July 2, 2020

CLARE HUDSON PAYNE, et al.,

Plaintiffs/Appellants,

vs.

SECRETARY OF STATE, et al.,

Defendant/Appellee.

On report from the Kennebec County Superior Court
Docket No. AUGSC-CV-2020-50

APPENDIX

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APPENDIX
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Filing Document: COMPLAINT
Filing Date: 04/16/2020

Minor Case Type: CONSTITUTIONAL/CIVIL RIGHTS

Docket Events:

04/17/2020 FILING DOCUMENT - COMPLAINT FILED ON 04/16/2020

04/17/2020 Party(s): CLARE HUDSON PAYNE
ATTORNEY - RETAINED ENTERED ON 04/16/2020
Plaintiff's Attorney: JAMES G MONTELEONE

04/17/2020 Party(s): PHILIP STEELE
ATTORNEY - RETAINED ENTERED ON 04/16/2020
Plaintiff's Attorney: JAMES G MONTELEONE

Party(s): FRANCES M BABB
ATTORNEY - RETAINED ENTERED ON 04/16/2020
Plaintiff's Attorney: JAMES G MONTELEONE

Party(s): THE COMMITTEE FOR RANKED CHOICE VOTING
ATTORNEY - RETAINED ENTERED ON 04/16/2020
Plaintiff's Attorney: JAMES G MONTELEONE

04/17/2020 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 04/17/2020
M MICHAELA MURPHY , JUSTICE
SPECIAL ASSIGNMENT

04/27/2020 Party(s): CLARE HUDSON PAYNE, MATTHEW DUNLAP SECRETARY OF STATE, PHILIP STEELE, FRANCES M
BABB, THE COMMITTEE FOR RANKED CHOICE VOTING
MOTION - MOTION TO INTERVENE FILED ON 04/27/2020
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING
KOUZOUNAS'S CONSENTED TO MOTION TO INTERVENT AND INCORPORATED MEMORANDUM OF LAW
DEMITROULA

04/29/2020 HEARING - PRETRIAL/STATUS SCHEDULED FOR 04/30/2020 at 03:00 p.m.
NOTICE TO PARTIES/COUNSEL

04/29/2020 HEARING - PRETRIAL/STATUS NOTICE SENT ON 04/29/2020

05/04/2020 HEARING - PRETRIAL/STATUS HELD ON 04/30/2020
M MICHAELA MURPHY , JUSTICE
COURT WILL CONDUCT A FURTHER PHONE CONFERENCE ON MAY 15, 2020 AT 10:00 AM. CLERK TO SEND
NOTICE ELECTRONICALLY TO COUNSEL OF RECORD. IF A PARTY IS NOT AVAILABLE, THEY SHOULD

CONFER WITH OTHER COUNSEL AND PROPOSE DIFFERENT DAYS OR TIMES TO THE OFFICE ELECTRONICALLY
FOR CONSIDERATION BY COURT.

05/04/2020 HEARING - PRETRIAL/STATUS SCHEDULED FOR 05/15/2020 at 10:00 a.m.
NOTICE TO PARTIES/COUNSEL

05/04/2020 Party(s): MATTHEW DUNLAP SECRETARY OF STATE
ATTORNEY - RETAINED ENTERED ON 05/04/2020
Defendant's Attorney: PHYLLIS GARDINER

05/04/2020 Party(s): DEMITROULA KOUZOUNAS
ATTORNEY - RETAINED ENTERED ON 05/04/2020
Attorney: ANN R ROBINSON

05/04/2020 Party(s): DEMITROULA KOUZOUNAS
ATTORNEY - RETAINED ENTERED ON 05/04/2020
Attorney: JOSHUA DUNLAP

05/04/2020 Party(s): CLARE HUDSON PAYNE, MATTHEW DUNLAP SECRETARY OF STATE, PHILIP STEELE, FRANCES M
BABB, THE COMMITTEE FOR RANKED CHOICE VOTING
MOTION - MOTION TO INTERVENE GRANTED ON 04/28/2020
M MICHAELA MURPHY , JUSTICE
COPIES TO PARTIES/COUNSEL
DEMITROULA KOUZOUNAS'S CONSENTED TO MOTION TO INTERVENE

ORDER ON

05/04/2020 HEARING - PRETRIAL/STATUS SCHEDULED FOR 05/15/2020 at 10:00 a.m.
M MICHAELA MURPHY , JUSTICE
NOTICE TO PARTIES/COUNSEL

05/04/2020 HEARING - PRETRIAL/STATUS NOTICE SENT ON 05/04/2020

05/15/2020 HEARING - PRETRIAL/STATUS HELD ON 05/15/2020
M MICHAELA MURPHY , JUSTICE
PARTIES WILL BE FILING A JOINT MOTION IN THE NEXT FEW WEEKS REGARDING RULE 24

05/15/2020 ORDER - CONFERENCE REPORT & ORDER ENTERED ON 05/15/2020
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL
JOINT MOTION IN THE NEXT FEW WEEKS REGARDING RULE 24

PARTIES WILL BE FILING A

05/18/2020 HEARING - PRETRIAL/STATUS HELD ON 05/15/2020
M MICHAELA MURPHY , JUSTICE
PARTIES WILL BE FILING A JOINT MOTION IN THE NEXT FEW WEEKS REGARDING RULE 24

06/03/2020 HEARING - PRETRIAL/STATUS SCHEDULED FOR 06/05/2020 at 04:30 p.m.
M MICHAELA MURPHY , JUSTICE
NOTICE TO PARTIES/COUNSEL

06/03/2020 HEARING - PRETRIAL/STATUS NOTICE SENT ON 06/03/2020

06/05/2020 Party(s): MATTHEW DUNLAP SECRETARY OF STATE
RESPONSIVE PLEADING - ANSWER & AFFIRMATIVE DEFENSE FILED ON 06/04/2020

06/08/2020 HEARING - PRETRIAL/STATUS HELD ON 06/05/2020
M MICHAELA MURPHY , JUSTICE

06/08/2020 ORDER - CONFERENCE REPORT & ORDER ENTERED ON 06/05/2020
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL PARTIES WILL BE ADDING
LANGUAGE TO THE JOINT MOTION ADDRESSING JUSTICIABILITY/RIPENESS AND THE COURT WILL DEFER
ISSUING THE REPORT UNTIL AFTER 6/15/20

06/10/2020 Party(s): CLARE HUDSON PAYNE, MATTHEW DUNLAP SECRETARY OF STATE, PHILIP STEELE, FRANCES M
BABB, THE COMMITTEE FOR RANKED CHOICE VOTING, DEMITROULA KOUZOUNAS
MOTION - OTHER MOTION FILED ON 06/04/2020
JOINT MOTION TO REPORT TO THE LAW COURT PURSUANT TO MR CIV P 24(A) WITH INCORPORATED
MEMORANDUM OF LAW

06/16/2020 Party(s): CLARE HUDSON PAYNE, MATTHEW DUNLAP SECRETARY OF STATE, PHILIP STEELE, FRANCES M
BABB, THE COMMITTEE FOR RANKED CHOICE VOTING, DEMITROULA KOUZOUNAS
MOTION - OTHER MOTION GRANTED ON 06/15/2020
M MICHAELA MURPHY , JUSTICE
JOINT MOTION TO REPORT TO THE LAW COURT PURSUANT TO MR CIV P 24(A) WITH INCORPORATED
MEMORANDUM OF LAW THIS ORDER IS INCORPORATED
INTO THE DOCKET BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT

06/16/2020 Party(s): CLARE HUDSON PAYNE, MATTHEW DUNLAP SECRETARY OF STATE, PHILIP STEELE, FRANCES M
BABB, THE COMMITTEE FOR RANKED CHOICE VOTING, DEMITROULA KOUZOUNAS
APPEAL - NOTICE OF APPEAL FILED ON 06/16/2020


06/16/2020 Party(s): CLARE HUDSON PAYNE, MATTHEW DUNLAP SECRETARY OF STATE, PHILIP STEELE, FRANCES M
BABB, THE COMMITTEE FOR RANKED CHOICE VOTING, DEMITROULA KOUZOUNAS
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 06/16/2020

06/23/2020 TRANSFER - TEMPORARY TRANSFER GRANTED ON 06/23/2020
LAW COURT

Receipts

04/17/2020	Misc Fee Payments	\$150.00	paid.
04/17/2020	Misc Fee Payments	\$25.00	paid.

A TRUE COPY
ATTEST:



Clerk

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AUGSC-CV-2020-50

CLARE HUDSON PAYNE, PHILIP)
STEELE, FRANCES M. BABB, and THE)
COMMITTEE FOR RANKED CHOICE)
VOTING,)

Plaintiffs)

v.)

MATTHEW DUNLAP, as MAINE)
SECRETARY OF STATE,)

Defendant)

and)

DEMITROULA KOUZOUNAS,)

Intervenor.)

**REPORT OF THE KENNEBEC
COUNTY SUPERIOR COURT TO THE
LAW COURT PURSUANT TO RULE
24(A) OF THE MAINE RULES OF
APPELLATE PROCEDURE**

The Joint Motion to Report to the Law Court filed in the above-captioned matter is hereby
GRANTED.

The Kennebec County Superior Court is of the opinion that this case presents constitutional questions related to the people's veto process that are of sufficient importance or doubt to justify a report to the Law Court for determination pursuant to Rule 24(a) of the Maine Rules of Appellate Procedure. A decision by the Law Court would, in at least one alternative, finally dispose of the above-captioned action. The Court further finds that the Parties agree to a report to the Law Court pursuant to M.R. App. P. 24(a); and the Parties agree upon all of the material facts pertinent to the report, as stated in the Agreed Upon Statement of Facts appended to the Joint Motion to Report, which shall be a part of the appellate record.

The Court finds that the matter presents a ripe case in controversy with the filing on June 15, 2020, of a people's veto petition containing, on its face, more than 63,067 signatures. This

filing with the office of the Secretary of State, by operation of Me. Const. art. IV, part 3, § 17(2), suspends P.L. 2019, ch. 539 unless that law is not properly subject to a people's veto referendum – the question of law this report presents.

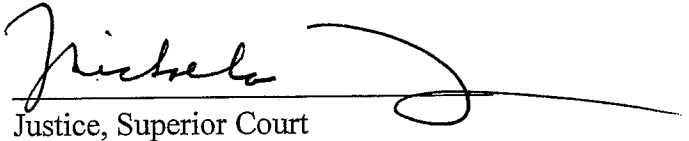
Accordingly, pursuant to M.R. Civ. P. 24(a), this Court reports this matter to the Law Court for resolution of the following questions of law:

- I. Which session of the 129th Legislature was the session at which L.D. 1083, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine, was passed for purposes of Me. Const. art. IV, pt. 3, §§ 16 and 17?
- II. Was P.L. 2019, ch. 539 effective January 12, 2020?
- III. Does 21-A M.R.S.A. § 901(1) permit filing of a people's veto application with the Department of the Secretary of State prior to adjournment of the legislative session at which the Act in question was passed?

The Clerk is directed to make the following entry in the civil docket pursuant to M.R. Civ. P. 79(a): "This Order is incorporated into the docket by reference at the specific direction of the Court."

DATED:

6/15/2020


Justice, Superior Court

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-20-_____

CLARE HUDSON PAYNE,)
PHILIP STEELE, FRANCES M.)
BABB, and THE COMMITTEE)
FOR RANKED CHOICE VOTING,)

Plaintiffs,)

v.)

MATTHEW DUNLAP, as MAINE)
SECRETARY OF STATE,)

Defendant.)

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs Clare Hudson Payne, Philip Steele, Frances M. Babb, and The Committee for Ranked Choice Voting, through their undersigned counsel, state the following as their Complaint for declaratory judgment and injunctive relief against Defendant Matthew Dunlap, in his official capacity as the Maine Secretary of State:

Introduction

1. Plaintiffs ask the Court to declare that Maine law bars the pending People's Veto initiative that seeks to suspend P.L. 2019, ch. 539, entitled "An Act To Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine" (hereinafter the "2019 RCV Law"), until a referendum vote is taken. The Maine Constitution, however, bars use of the People's Veto provision to suspend laws already in effect such as the 2019 RCV Law, which immediately took effect on January 12, 2020 when the governor's inaction had the same force and effect as if the law was signed at the close of the 2019 legislative session. Only a direct

initiative referendum can lawfully repeal a law already in effect, not a People's Veto, and that option remains available to proponents seeking to challenge the 2019 RCV Law. Alternatively, the proposed People's Veto is prohibited by 14 M.R.S.A. § 901, because no application for a people's veto referendum was filed with the Secretary of State during the restricted 10-day filing period that opened upon legislative adjournment on March 17, 2020 and closed on March 31, 2020. Plaintiffs further ask that the Court enjoin the Maine Secretary of State from accepting or balloting the pending People's Veto initiative seeking to suspend and veto the 2019 RCV Law, because an erroneous suspension of the 2019 RCV Law will wrongfully alter and impact Maine's voting in the 2020 general election for the President of the United States.

Parties

2. Plaintiff Clare Hudson Payne is a duly registered Maine voter enrolled with the Republican Party, and a citizen of Brooksville, Maine.

3. Plaintiff Philip Steele is a duly registered Maine voter enrolled with the Democratic Party, and a citizen of Portland, Maine.

4. Plaintiff Frances M. Babb is a duly registered Maine voter unaffiliated with any political party, and a citizen of Sumner, Maine.

5. Plaintiff Committee for Ranked Choice Voting is a Maine nonprofit corporation public proponent of the 2019 RCV Law. The Committee's primary place of business in Gorham, Maine.

6. Defendant Matt Dunlap is the Maine Secretary of State, with a primary place of business in Augusta, Maine, in Kennebec County. Mr. Dunlap is named in his official capacity.

Jurisdiction and Venue

7. This Court has jurisdiction over this Complaint for Declaratory Judgment pursuant to 14 M.R.S.A. §§ 5951-5963.

8. Venue is properly laid in Kennebec County Superior Court pursuant to 14 M.R.S.A. § 505, because the Secretary of State conducts state business from his principal office located in the City of Augusta, Kennebec County, Maine.

9. Plaintiffs have standing to raise these issues before the Court.

10. Plaintiffs respectfully request a speedy hearing of the action for declaratory judgment pursuant to Rule 57 of the Maine Rules of Civil Procedure.

Facts Common to All Counts

11. The 2019 RCV Law received final passage in the first special session of Maine's 129th Legislature (the "2019 Session") and was sent to Governor Janet Mills for executive action.

12. The 2019 Session went into recess on August 26, 2019.

13. The Governor took no action whatsoever on the 2019 RCV Law passed in the 2019 Session.

14. Legislation passed in the 2019 Session could take effect anytime after November 24, 2019, the date 90 days after the session's recess.

15. The next meeting of the 129th Legislature was on January 8, 2020.
16. The 2019 RCV Law was chaptered as P.L. 2019, ch. 539 on January 12, 2020, the date three days after that “next meeting” of the Legislature.
17. On February 3, 2020, the Secretary of State approved an application that sought to initiate a constitutional People’s Veto referendum of the 2019 RCV Law (the “Proposed Referendum”). The Secretary of State’s Office provided proponents with authorized petition forms that were customized for the Proposed Referendum.
18. The Secretary of State’s Office has publicly stated that the Secretary will accept petitions for the Proposed Referendum anytime through and until the date that is 90 days after adjournment of the Legislature’s second regular session.
19. The 129th Legislature adjourned its second regular session (the “2020 Session”) on March 17, 2020.
20. The date 10 business days after adjournment of the 2020 Session was March 31, 2020; the date 90 days after adjournment is June 15, 2020.
21. There is a real and substantial controversy between the parties evinced by the Secretary of State’s acceptance of an application by proponents for the Proposed Referendum based upon confusion regarding the effective date of the 2019 RCV Law and the statutory prerequisites for initiating a valid People’s Veto referendum.

COUNT I
Declaratory Judgment
(Unconstitutional Application of
Me. Const. art. IV, pt. 3, § 17)

22. Plaintiffs repeat and reallege every fact set forth above as if fully set forth herein.

23. The Proposed Referendum violates the Maine Constitution's Article IV, Part 3, § 17, which expressly limits applicability of People's Veto referendums to those laws not already in effect.

24. The 2019 RCV Law, P.L. 2019, ch. 539, took immediate effect on January 12, 2020, pursuant to Section 2 and Section 16 of the Constitution's Article IV, Part 3.

25. Section 2 of Article IV, Part 3, requires that those acts passed by the Legislature, but not timely returned by the Governor with objections, "have the same force and effect" as if the Governor had timely signed the law after the legislative session in which it was passed.

26. The Legislature alone can "pass" acts of law through the casting of votes of support by both legislative houses. The term "pass" or "passage" is used to describe the legislative power constitutionally reserved for the Legislature throughout the Constitution's delineation of legislative powers in Article IV, Part 3.

27. No legislative power that the Constitution vests in the Governor constitutes a passing of law. Rather, the Constitution's Article IV, Part 3 delineation of powers provides that the Governor either "approves," "signs," or "return[s] ... with objections" those acts of law *passed* by the Legislature.

28. Section 16 of the Constitution's Article IV, Part 3 imposes a restriction on the earliest possible date that non-emergency legislation may take effect. Specifically, Section 16 provides that "[n]o Act ... of the Legislature ... shall take effect until 90 days after the recess of the session of the Legislature in which it was passed."

29. The 2019 Session of the Legislature passed the 2019 RCV Law.

30. The 2020 Session of the Legislature took no action whatsoever on the 2019 RCV Law, nor did the 2020 Session have opportunity to take action to pass the 2019 RCV Law.

31. Section 16 of the Constitution's Article IV, Part 3 establishes that the laws passed in a Legislative session may take effect no earlier than 90 days after that Legislative session's recess. Section 16 does *not* include any requirement that every act of law shall be subject to a 90-day waiting period after being chaptered.

32. The 2019 RCV Law was eligible to go into effect anytime *after* November 24, 2019, the date "90 days after the recess of the session of the Legislature in which it was passed," pursuant to Me. Const. art. IV, pt. 3, § 16.

33. The 2019 RCV Law went into effect immediately upon being chaptered as P.L. 2019, ch. 539 on January 12, 2020, because the earliest-available effective date had already passed in November 2019.

34. The applicability of a People's Veto referendum is limited by Section 17 of the Constitution's Article IV, Part 3, providing its use only for those legislative acts that are "passed by the Legislature *but not then in effect*" (emphasis added).

35. Because the 2019 RCV Law is already in effect, the Maine Constitution expressly excludes the use of a People's Veto referendum to modify it.

36. Maine citizen legislators retain the right and opportunity to repeal or otherwise modify the 2019 RCV Law through the Citizen's Initiative process set out in Section 18 of the Constitution, Article IV, Part 3.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment declaring that the 2019 RCV Law took immediate effect on January 12, 2020, pursuant to Me. Const. art. IV, pt. 3, §§ 2, 16; declaring that the People's Veto provisions of Me. Const. art. IV, pt. 3, § 17 bar the application of the referendum procedure on the 2019 RCV Law already in effect; and granting any other and further relief that the Court deems necessary and just.

COUNT II
Declaratory Judgment
(Violation of 21-A M.R.S.A. § 901)

37. Plaintiffs repeat and reallege every fact set forth above in Paragraphs 1-21 as if fully set forth herein.

38. In the alternative, the Proposed Referendum violates statutory prerequisites for valid People's Veto petitions set out in 21-A M.R.S.A. § 901.

39. Subsection 1 of 21-A M.R.S.A. § 901 is titled "Limitations on Petitions." The subsection was adopted by the Legislature to impose reasonable limitations on People's Veto petitions by requiring the that petition drives are consistently conducted within a timeframe not longer than 90 days.

40. 21-A M.R.S.A. § 901(1) requires that “[a]n application for a people's veto referendum petition *must be filed* in the Department of the Secretary of State *within 10 business days after adjournment* of the legislative session at which the Act in question was passed” (emphasis added).

41. Section 901(1) thereby establishes a defined and limited window of time during which applications may be filed. The lawful application window opens at the session's adjournment and closes 10 business days later.

42. The 10-day filing window achieves the legislative purpose of ensuring parity in the amount of time available to various People's Veto proponents so that the timing of legislative passage cannot drastically extend the 90-days that the Constitution provides for proponents to gather sufficient People's Veto petition signatures.

43. Absent Section 901(1)'s proper application, proponents People's Veto challenging an act passed early in a long legislative session could receive significantly more than 90 days to collect the required petitions, while those proponents seeking a People's Veto challenge of an act passed at the end of a legislative session are constrained.

44. Adjournment of the 2020 Session of the Legislature occurred on March 17, 2020; the date “10 business days after adjournment” of the 2020 Session, as referenced in 21-A M.R.S.A. § 901(1), was March 31, 2020.

45. No application for a People's Veto referendum of the 2019 RCV Law was filed with the Secretary of State on or after the 2020 Session's adjournment.

46. The Secretary of State's Office could accept filings of People's Veto applications during the statutory March 17, 2020 to March 31, 2020 filing period.

47. The Proposed Referendum failed to satisfy the requirements of 21-A M.R.S.A. § 901(1) ensuring consistent application of the Constitution's 90-day petition-gathering period for proposed People's Veto referendums.

48. The wording of 21-A M.R.S.A. § 901 is ambiguous and subject to alternate interpretations that are inconsistent with the legislative intent to ensure parity for People's Veto referendum signature collection.

49. The Law Court has never interpreted the language of 21-A M.R.S.A. § 901(1).

50. The Secretary of State has misinterpreted the requirements of 21-A M.R.S.A. § 901(1) based upon an erroneous 1997 Superior Court holding in the non-precedential matter *Remmel et al. v. Gwadosky*, AP-97-112 (Me. Super. Ct., Ken. Cty., Nov. 21, 1997).

51. *Remmel's* holding should be disregarded. *Remmel* was decided in error based upon an reading that the statute's use of "within" set an endpoint and not a point of beginning. *Id.*, slip op. at 7-8. *Remmel*, however, omitted interpretation of the word "within" in conjunction with "after adjournment," as Section 901(1) states.

52. In fact, 21-A M.R.S.A. § 901(1)'s drafters' wording to require an application filed "*within* 10 business days *after* adjournment" demonstrates the the statute's unambiguous purpose of setting the date of adjournment as the earliest possible filing date for a People's Veto referendum application.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment declaring that the Proposed Referendum of P.L. 2019, ch. 539 cannot be accepted or approved by the Secretary of State as a matter of law because it failed to satisfy the filing requirements set forth in 21-A M.R.S.A. § 901, or alternatively declaring that any petition signatures signed prior to legislative adjournment on March 17, 2020 are invalid as a matter of law; and granting any other and further relief that the Court deems necessary and just.

COUNT III
Injunctive Relief

53. Plaintiffs repeat and reallege every fact set forth above as if fully set forth herein.

54. Plaintiffs seek to enjoin the Secretary of State from accepting or balloting the proposed People's Veto referendum of the 2019 RCV Law because the Proposed Referendum is barred by the Maine Constitution, art. IV, pt. 3, § 17, or by the statutory requirements of 21-A M.R.S.A. § 901.

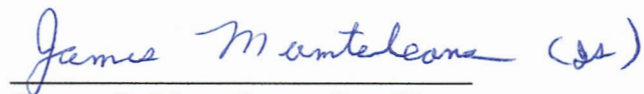
55. The Plaintiffs will suffer irreparable injury if the injunction is not granted because the Secretary of State's acceptance of the Proposed Referendum petition has the effect of suspending the 2019 RCV Law, which will alter and impact Maine voting in the 2020 general election for the President of the United States.

56. The injury to Plaintiffs and the general public outweighs any harm that granting the injunctive relief could inflict on the Defendant.

57. The public interest will be served by granting the injunction and ensuring lawful application of the People's Veto process.

WHEREFORE, Plaintiffs request that this Court, upon entry of judgment for Plaintiffs and against Defendant on either Count I or Count II, enjoin the Secretary of State from accepting or balloting the pending People's Veto initiative seeking to suspend and veto the 2019 RCV Law, and grant any other relief the Court deems necessary and just.

Dated at Portland, Maine, this 15th day of April, 2020.



James G. Monteleone, Bar No. 5827

Attorney for Plaintiffs Clare Hudson Payne,
Philip Steele, Frances M. Babb, and The
Committee for Ranked Choice Voting

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STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AUGSC-CV-2020-50

CLARE HUDSON PAYNE, PHILIP)
STEELE, FRANCES M. BABB, and THE)
COMMITTEE FOR RANKED CHOICE)
VOTING,)

Plaintiffs)

v.)

MATTHEW DUNLAP, as MAINE)
SECRETARY OF STATE,)

Defendant)

and)

DEMITROULA KOUZOUNAS,)

Intervenor.)

STIPULATED FACTS

1. L.D. 1083, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine, was introduced and debated during the 129th Legislature's First Regular Session in the spring of 2019.

2. The Maine House of Representatives enacted L.D. 1083, as amended by Committee Amendment "A" (S-313), on June 19, 2019 during the First Regular Session.

3. L.D. 1083 was unfinished business in the Maine Senate at the time of adjournment *sine die* of the First Regular Session on June 20, 2019, and was carried over to the Legislature's First Special Session pursuant to a Joint Order.

4. The Maine Senate enacted L.D. 1083 in concurrence with the House during the First Special Session held on August 26, 2019.

5. The 129th Legislature's First Special Session adjourned *sine die* on August 26, 2019.

6. L.D. 1083 was presented to the Governor on August 26, 2019.

7. The Governor did not sign or return L.D. 1083 to the Legislature within the ten days after August 26, 2019.

8. On September 6, 2019, the Governor announced her intention to allow L.D. 1083 to become law without her signature.

9. Counsel for Demitroula Kouzounas received guidance from the Secretary of State's office regarding the appropriate timing for filing an application for a people's veto referendum by email dated September 10, 2019, which attached Attorney General's Opinion 79-170. A copy of Deputy Secretary Flynn's email is attached hereto as Exhibit A.

10. On September 10, 2019, Demitroula Kouzounas filed an application for a people's veto referendum regarding L.D. 1083 with the Secretary of State. The filing is attached hereto as Exhibit B.

11. November 25, 2019 was the date 90 days after adjournment *sine die* of the Legislature's First Special Session.

12. The next meeting of the 129th Legislature occurred when the Legislature convened its Second Regular Session on January 8, 2020.

13. The Governor did not return L.D. 1083 to the Legislature within three days after January 8, 2020.

14. L.D. 1083 was chaptered as P.L. 2019, ch. 539 on January 12, 2020. The public law is attached hereto as Exhibit C.

15. The Legislature did not act on L.D. 1083 or amend P.L. 2019, ch. 539 during the Second Regular Session.

16. On January 16, 2020, Demitroula Kouzounas filed an application for a people's veto referendum regarding P.L. 2019, ch. 539 with the Secretary of State. The filing is attached hereto as Exhibit D.

17. The Secretary of State approved the referendum application on February 3, 2020 and provided proponents with referendum petition forms on which to collect petition signatures.

18. On March 3, 2020, the Secretary of State administered presidential primary elections. The Democratic Party primary had more than three candidates. Ranked choice voting was not used, and Joseph R. Biden, Jr., was declared the victor based on a plurality vote.

19. Referendum proponents engaged in signature collection efforts between February 3 and March 17, 2020, as well as thereafter.

20. The 129th Legislature's Second Regular Session adjourned *sine die* on March 17, 2020.

21. March 31, 2020 was the date 10 business days after adjournment *sine die* of Second Regular Session of the 129th Legislature.

22. No application for a people's veto referendum pertaining to P.L. 2019 ch. 539 was filed with the Secretary of State between March 17 and March 31, 2020.

23. The Secretary of State's office was open for business between March 17 and March 31, 2020.

24. June 15, 2020 is the date 90 days after adjournment *sine die* of the 129th Legislature's Second Regular Session provided in Me. Const. art. IV, pt. 3, § 17.

Dated at Portland, Maine, this 2nd day of June, 2020

James Monteleone (js)

James G. Monteleone (Bar No. 5827)
BERNSTEIN SHUR
100 Middle Street
P.O. Box. 9729
Portland, ME 04014
Tel: (207) 774-1200
jmonteleone@bernsteinshur.com

*Attorney for Plaintiffs Clare Hudson Payne,
Philip Steele, Frances M. Babb, and The
Committee for Ranked Choice Voting*

Phyllis Gardiner (js)

Phyllis Gardiner (Bar No. 2089)
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
Tel: (207) 626-8830
Phyllis.Gardiner@maine.gov

*Attorney for Defendant Matthew Dunlap, in
his official capacity as Secretary of State for
the State of Maine*

Ann Robinson (js)

Ann Robinson (Bar No. 3898)
Joshua D. Dunlap (Bar No. 4477)
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
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arobinson@pierceatwood.com
jdunlap@pierceatwood.com

*Attorneys for Intervenor Demitroula
Kouzounas*

From: Flynn, Julie <Julie.Flynn@maine.gov>
Sent: Tuesday, September 10, 2019 2:02 PM
To: Ann Robinson
Cc: Dunlap, Matthew; Packard, Melissa
Subject: timing of potential people's veto
Attachments: Me. Att'y Gen. Op. 79-179.rtf

Importance: High

*****This message originated outside your organization*****

Hi Ann,

Our understanding, as explained in the attached Attorney General's Opinion, is that legislation is not considered to have "passed" until it has been signed by the Governor, vetoed with the Legislature then overriding the veto, or allowed to become law without the Governor's signature. The Governor has announced her intention to allow LD 1083 to become law without her signature, but under Article IV, part 3, section 2 this cannot occur until the fourth day after the this Legislature reconvenes – presumably at the second regular session in January, 2020. Until that occurs, there is no chaptered public law that petitioners could seek to veto.

I understand your concern that someone might take a contrary position and argue that the 10-business day period for filing an application to circulate a people's veto petition, pursuant to 21-A M.R.S. § 901(1), started to run once the special session ended on August 26th. If that were true, then the deadline for filing an application under this statute would be today.

If your clients choose to file an application today to avoid that argument being raised, we are willing to keep it on file, but we would not consider the application "complete" until after the legislation has become a chaptered public law. This means we would not draft a ballot question or create a petition form for circulation, pursuant to 21-A M.R.S. § 901(4), until after the public law is filed with us in January.

I hope this approach satisfies your concerns. If you have further questions, please let me know.

Julie L. Flynn
Deputy Secretary of State
Bureau of Corporations, Elections and Commissions
101 State House Station
Augusta, ME 04333-0101
Phone: (207) 624-7736
Fax: (207) 287-5428

PIERCE ATWOOD

2019 SEP 10 PM 4: 22

OFFICE OF
THE SECRETARY OF STATE

ANN R. ROBINSON, ESQ.
Merrill's Wharf
254 Commercial Street
Portland, ME 04101

157 Capitol Street, Suite B
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pierceatwood.com

EXHIBIT

B

September 10, 2019

Via Hand-delivery

Honorable Matthew Dunlap
Secretary of State
148 State House Station
Augusta, Maine 04333-0148

RE: Application for People's Veto of L.D. 1083, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine

Dear Secretary of State Dunlap:

This firm serves as counsel to the Maine Republican Party. Enclosed for filing please find an Application for People's Veto of L.D. 1083, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine, bearing the notarized signature of the applicant, Demitroula Kouzounas, and the signatures of five registered voters, Elaine Bridge, Laura Parker, Tristen Starbird, Bethanie Morgan and Beverly Cronkhite (the "Application").

Pursuant to Attorney General Opinion No. 79-170, 1979 WL 482479, we understand that we are not obligated to submit a People's Veto Application until 2020. Nonetheless, consistent with email correspondence received by me from Deputy Secretary of State Julie Flynn, dated today, we are submitting this Application today with the understanding that your office will retain the Application on file, but will defer action on it until January, 2020, after the legislation becomes a chaptered public law.

Thank you for your attention to this matter.

Sincerely yours,


Ann R. Robinson

cc: Deputy Secretary of State Julie Flynn

STATE OF MAINE
APPLICATION FOR PEOPLE'S VETO REFERENDUM

APPLICANT INFORMATION: (List the contact person for the people's veto proponents.)

Name of Applicant: Demetrioula Kouzounas
Mailing Address: 361 SEASIDE AVE
Municipality of Residence: Saco
Home Phone: (207) 934-1877 Work Phone: (207) 883-3229 FAX: (207) 329-9978

I hereby invoke the people's veto referendum process provided for by the Constitution of Maine, Article IV, Part Third and governed by Title 21-A M.R.S.A. Chapter 11. Attached is the official citation of and/or a copy of the Public Law, Chapter, Title, and year enacted, to be submitted to the people for veto.

[Signature]
Signature of Applicant

Subscribed and sworn before me on

September 10, 2019

(Date)

[Signature]

(Signature of Notary Public or Agent of the Secretary of State)

Kim E. Pellengill

(Print Name of Notary Public or Agent of the Secretary of State)

DESIGNATED VOTER INFORMATION: (List five voters, other than the applicant, to receive notices of proceedings.) Please list voter's name, as it appears on the voting list, the mailing address, telephone number, (if published), the municipality of legal residence (where registered to vote), and voter's signature.

1. Laura B. Parker
26 Chantel Dr
Sidney ME 04350
Phone: 207-649-2677
Municipality of Residence: Sidney
Signature: [Signature]

2. TRISTAN STARBIRD
2215 N PALERMO RD
PALERMO, ME 04354
Phone: 207 680 0527
Municipality of Residence: PALERMO
Signature: [Signature]

3. Beverly E Cronkshite
98 Mills Rd.
Whitefield, Me 04353
Phone: (207) 512-0091
Municipality of Residence: Whitefield
Signature: Beverly E. Cronkshite

4. Bethanie Morgan
8 Cedar St.
Augusta, ME 04330
Phone: 207-441-1499
Municipality of Residence: Augusta
Signature: [Signature]

5. ELAINE C BRIDGE
Rd 245-57 Readfield Road
Manchester, ME 04351
Phone: (207) 623-3794
Municipality of Residence: Manchester
Signature: Elaine C Bridge

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

S.P. 315 - L.D. 1083

EXHIBIT

C

An Act To Implement Ranked-choice Voting for Presidential Primary and
General Elections in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1, sub-§27-C, as repealed and replaced by PL 2017, c. 316, §1, is amended to read:

27-C. Elections determined by ranked-choice voting. "Elections determined by ranked-choice voting" means any of the following elections in which 3 or more candidates have qualified to be listed on the ballot for a particular office or at least 2 such candidates plus one or more declared write-in candidates have qualified for that particular office:

- A. Primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative;
- B. General and special elections for the offices of United States Senator and United States Representative to Congress; ~~and~~
- D. General elections for presidential electors; and

Sec. 2. 21-A MRSA §1, sub-§27-C, ¶E is enacted to read:

E. Primary elections for the office of President of the United States.

Sec. 3. 21-A MRSA §723-A, sub-§5-B is enacted to read:

5-B. Presidential primary elections; selection of delegates. Notwithstanding any provision of this section to the contrary, selection and allocation of delegates to a party's national presidential nominating convention must be in accordance with any reasonable procedures established at the state party convention.

Sec. 4. 21-A MRSA §801, sub-§2 is enacted to read:

2. Counting of ballots. Counting of ballots for candidates for President must proceed according to the ranked-choice method of counting votes described in section 723-A.

Sec. 5. 21-A MRSA §805, sub-§2, as enacted by PL 1985, c. 161, §6, is amended to read:

2. Presidential electors. The presidential electors at large shall cast their ballots for the presidential and vice-presidential candidates who received the largest number of votes in the State according to the ranked-choice method of counting votes described in section 723-A. The presidential electors of each congressional district shall cast their ballots for the presidential and vice-presidential candidates who received the largest number of votes in each respective congressional district according to the ranked-choice method of counting votes described in section 723-A.

Sec. 6. Contingent effective date. Those sections of this Act that enact the Maine Revised Statutes, Title 21-A, section 1, subsection 27-C, paragraph E and Title 21-A, section 723-A, subsection 5-B take effect upon the enactment of laws adopting a presidential primary election in this State.

PIERCE ATWOOD

2020 JAN 16 PM 2:04

OFFICE OF
THE SECRETARY OF STATE

ANN R. ROBINSON, ESQ.
Merrill's Wharf
254 Commercial Street
Portland, ME 04101

157 Capitol Street, Suite 3
Augusta, ME 04330

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FX 207.791.1350
arobinson@pierceatwood.com
pierceatwood.com

EXHIBIT

D

January 16, 2020

Via Hand-delivery

Honorable Matthew Dunlap
Secretary of State
148 State House Station
Augusta, Maine 04333

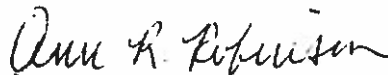
RE: Application for People's Veto of Public Law 2019, Chapter 539, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine

Dear Secretary of State Dunlap:

This firm serves as counsel to the Maine Republican Party. Enclosed for filing please find the Application for People's Veto of Public Law 2019, Chapter 539, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine, signed by Demitroula Kouzounas, bearing the names of five signatories, and to which a copy of the above-referenced public law chapter is attached (the "Application").

As you are aware, we have on file with your office our application for this same purpose that we submitted on September 10, 2019; and your office stated at the time that you "would not consider the application as complete until after the legislation has become a chaptered public law." You further stated that your office "would not draft a ballot question or create a petition for circulation, pursuant to 21-A M.R.S. section 901(4), until after the public law is filed with [your office] in January." While we recognize that you are prepared to proceed on the basis of our pending application, we are nevertheless submitting the enclosed completed Application now that the legislation has become a chaptered public law. This Application includes an updated list of designated voters for the people's veto referendum.

Sincerely yours,



Ann R. Robinson

CC: Ms. Demitroula Kouzounas

STATE OF MAINE
APPLICATION FOR PEOPLE'S VETO REFERENDUM

APPLICANT INFORMATION: (List the contact person for the people's veto proponents.)

Name of Applicant: Demitroula Kouzamas

2020 JAN 16 PM 2:04

Mailing Address: 361 Seaside Avenue Saco Maine 04072

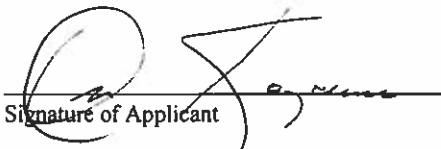
OFFICE OF
THE SECRETARY OF STATE

Municipality of Residence: Saco

Home Phone: 207-934-1877 Work Phone: 207-883-3229


FAX: _____

I hereby invoke the people's veto referendum process provided for by the Constitution of Maine, Article IV, Part Third and governed by Title 21-A M.R.S.A. Chapter 11. Attached is the official citation of and/or a copy of the Public Law, Chapter, Title, and year enacted, to be submitted to the people for veto.


Signature of Applicant

Subscribed and sworn before me on

1/15/20
(Date)


(Signature of Notary Public or Agent of the Secretary of State)

Kim E. Pettengill
(Print Name of Notary Public or Agent of the Secretary of State)

DESIGNATED VOTER INFORMATION: (List five voters, other than the applicant, to receive notices of proceedings.) Please list voter's name, as it appears on the voting list, the mailing address, telephone number, (if published), the municipality of legal residence (where registered to vote), and voter's signature.

1. Michael J Hersey
15 Martin Ave
Waterville, ME
Phone: 207-692-6865
Municipality of Residence: Waterville
Signature: Michael Hersey

2. Julie Rabinowitz
16 Muirfield Rd
Falmouth, ME 04105
Phone: 207-878-3139
Municipality of Residence: Falmouth
Signature: Julie Rabinowitz

3. Carl A Pettengill III
171 Northern Avenue
Farmingdale, ME 04344
Phone: 207-314-9931
Municipality of Residence: Farmingdale
Signature: Carl A. Pettengill III

4. Helen Tutwiler
287 WATER ST APT 2
CARDNER, ME 04345
Phone: (207) 441-0610
Municipality of Residence: CARDNER
Signature: Helen Tutwiler

5. Elaine C Bridge
PO Box 245
Manchester, ME 04351
Phone: 207-623-3297
Municipality of Residence: Manchester
Signature: Elaine C. Bridge

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

S.P. 315 - L.D. 1083

**An Act To Implement Ranked-choice Voting for Presidential Primary and
General Elections in Maine**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1, sub-§27-C, as repealed and replaced by PL 2017, c. 316, §1, is amended to read:

27-C. Elections determined by ranked-choice voting. "Elections determined by ranked-choice voting" means any of the following elections in which 3 or more candidates have qualified to be listed on the ballot for a particular office or at least 2 such candidates plus one or more declared write-in candidates have qualified for that particular office:

A. Primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative;

B. General and special elections for the offices of United States Senator and United States Representative to Congress; ~~and~~

D. General elections for presidential electors; and

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Sec. 6. Contingent effective date. Those sections of this Act that enact the Maine Revised Statutes, Title 21-A, section 1, subsection 27-C, paragraph E and Title 21-A, section 723-A, subsection 5-B take effect upon the enactment of laws adopting a presidential primary election in this State.